

REMARKS

Applicants have amended claims 1 and 12 to include the features of claim 2 (now canceled). The pending claims are claims 1 and 4-12, of which claims 1 and 12 are in independent form.

Claims 1, 4-10, and 12 have been rejected under 35 U.S.C. §102(b) as anticipated by Callol (U.S. Pat. No. 6,174,329). However, Callol does not disclose or suggest a member having a portion that includes "a first layer including a radiopaque material, and a second layer defining an outer surface of the member and comprising an alloy of the radiopaque material and a second material," as claimed.

Callol discloses a radiolucent stent that is coated with a radiopaque layer and a protective layer. *See, e.g.*, Callol, col. 4, lines 52-54; *see also, e.g.*, Callol, FIG. 6. Callol provides several examples of materials that can be used to form the protective layer. Titanium and tantalum, for example, are described as suitable materials with which to form the protective coating. *See* Callol, col. 6, lines 35-36 ("A metallic coating (i.e., titanium and tantalum) can be applied by electroplating, evaporation, plasma-vapor deposition, cathodic arc deposition, sputtering, ion implantation, electrostatically, electrochemically, a combination of the above, or the like.").

The Examiner seems to have taken the position that Callol discloses a stent having a radiopaque layer formed of titanium or tantalum and a protective layer formed of an alloy of titanium and tantalum. However, no clear explanation has been provided to support this position, and no clear rebuttal was provided in the Office action to Applicants' previously-submitted remarks. In fact, the only information set forth in the Office action to support this view was a cite to the above-quoted sentence of Callol (i.e., Callol, col. 6, lines 35-36) and a cite to one other sentence of Callol that describes suitable materials with which to form the radiopaque layer (i.e., Callol, col. 1, line 64). Applicants, therefore, request that a clear explanation of the Examiner's reasoning be provided for the record, as required by MPEP 707.07(f).

Notwithstanding, Applicants submit that Callol neither discloses nor suggests a layer comprising an alloy of titanium and tantalum. As noted by the Examiner, Callol notes that the

protective layer can be "a metallic coating (i.e., titanium and tantalum)." It does not follow from this phrase, however, that the metallic coating referred to is an alloy of titanium and tantalum. In fact, earlier in the same paragraph, Callol explains that "a polymeric layer (i.e., Parylene, polycarbonateurethane copolymer, silicone rubber, hydrogels, polyvinyl alcohol, polyvinyl acetate, polycaprolactone, urethanes, PHEMA-acrylic, etc.)" can be applied using various techniques. *See* Callol, col. 6, lines 27-35. Similarly, Callol explains that "a ceramic coating (i.e., zirconium nitrite, pyrolytic carbon, graphite, Nedox, and titanium nitrite)" can be applied using various techniques. *See* Callol, col. 6, lines 39-44. Just as it would be nonsensical to conclude that the polymeric layer includes all of the above-listed polymers, or that the ceramic coating includes all of the above-listed materials, it would be improper to conclude that Callol's metallic coating includes both titanium and tantalum. The consistent, and thus more appropriate, interpretation is that Callol's metallic coating can include either titanium or tantalum, not an alloy, as claimed.

In light of the discussion above, Applicants respectfully request that the rejections be withdrawn, or that the Examiner provide a clear explanation of the Examiner's reasoning so that it may be addressed.

Dependent claim 11 has been rejected under 35 U.S.C. §103 as being unpatentable over Callol in view of Roth (U.S. Pat. App. Pub. No. 2004/0054399). Roth does not cure the deficiencies of Callol as discussed above. Accordingly, claim 11, which depends from claim 1, is patentable for at least the reasons noted above.


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Respectfully submitted,

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